

"[§]CHAPTER 138[§]"

ENHANCED 911 SERVICES [~~FOR MOBILE PHONES~~]

WHEREAS, PUBLIC LAW 110-283; NEW AND EMERGING TECHNOLOGIES 911 IMPROVEMENT ACT OF 2008 became law on July 23, 2008;

WHEREAS, PUBLIC LAW 110-283; NEW AND EMERGING TECHNOLOGIES 911 IMPROVEMENT ACT OF 2008 facilitates the rapid deployment of IP-enabled 911 and E-911 services, encourages the Nation's transition to a national IP-enabled emergency network, and improve 911 and E-911 access to those with disabilities;

WHEREAS, the State of Hawaii is only one of six states that does not have a single entity that coordinates all enhanced 911 services;

WHEREAS, there is currently only one state board, the wireless enhanced 911 board, that administers enhanced 911 services in the State of Hawaii

WHEREAS, the technologies involved in providing enhanced 911 services have converged to a point that systems required to provide such service are blended;

WHEREAS, enhanced 911 systems are evolving to accept other forms of communications such as text, video and Telematics data;

WHEREAS, the current surcharges for wireline and wireless enhanced 911 service does not account for prepaid wireless connections, or future technologies such as broadband service or IP-enabled services;

WHEREAS, the current wireless enhanced 911 board does not include representation of other communications service providers;

THEREFORE; in the interest of the safety of the public and visitors to Hawaii, the following legislation is proposed to address the need for a single state entity to administer enhanced 911 services for the State of Hawaii.

[§]138-1[§] **Definitions.** As used in this chapter, unless the context requires otherwise:

"911" means the digits, address, Internet protocol address, or other information used to access or initiate a call to a public safety answering point.

“9-1-1 Coordinator” means the person designated to carry out the responsibilities of coordinating 9-1-1 services as required in Section 3(b) of Wireless Telecommunications Act of 1999 (9-1-1 Act)

"911 system" means an emergency communications system that:

(1) Enables the user of a voice communications service connection such as telephone, computer, or commercial mobile radio service, Interconnected VoIP service or a data communications service connection that transmits data exclusively, such as text messaging, to reach a public safety answering point by accessing 911, or via a service/relay bureau ; and

(2) Provides enhanced 911 service.

"Automatic location identification" means an enhanced 911 service capability that enables the automatic display of information indicating the approximate geographic location of the communication device used to place a 911 call.

"Automatic number identification" means [~~a wireless~~] an enhanced 911 service capability that enables the automatic display of the ten-digit [~~wireless~~] telephone number [~~used to place a 911 call in accordance with the Federal Communications Commission order.~~] or some other unique identifier of the device from which a 911 call is placed.

"Board" means the [~~wireless~~] enhanced 911 board established under this chapter.

"Commercial mobile radio service" means commercial mobile radio service under sections 3(27) and 332(d) of the Federal Telecommunications Act of 1996, 47 U.S.C. 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, August 10, 1993, 107 Stat. 312.

"Commercial mobile radio service connection" means each active wireless telephone number assigned to a commercial mobile radio service customer, including end-users of resellers whose place of primary use is within the State.

~~["Federal Communications Commission order" means the original order issued in the Federal Communications Commission Docket No. 94-102 governing wireless enhanced 911 service and any other Federal Communication Commission orders related to the provision of wireless enhanced 911 service.]~~

"Call" means any communication, message, signal, or transmission.

"Communication service" means a service capable of accessing, connecting with, or interfacing with a 911 system, by dialing, initializing, or otherwise activating the 911 system by means of a local telephone device, commercial mobile radio service device, interconnected voice over Internet protocol (VoIP) device, indirect communication through a service bureau or call relay service, such as alarm companies or telematic providers, or any other means.

"Communications service connection" means each telephone number or device's unique identifier assigned to a residential or commercial subscriber by a communications service provider, without regard to technology deployed.

"Communications service provider" means an entity that provides communications service to a subscriber.

"Database service provider" means a service supplier who maintains and supplies or contracts to maintain and supply an automatic information location database or master street address guide.

"Enhanced 911 fund" or "fund" means the special fund established by section 138-3.

"Enhanced 911 service costs" means all capital, nonrecurring, and recurring costs directly related to the implementation, operation, and administration of enhanced 911 services.

"Prepaid connections" means the sale of a communications service which is paid for in advance or sold in predetermined units of which the number of units declines with use of the services.

"Proprietary information" means customer lists and other related information (including the number of customers), technology descriptions, technical information, or trade secrets, and the actual or developmental costs of [wireless] enhanced 911 service that are developed, produced, or received internally by a [wireless] communications service provider or by a provider's employees, directors, officers, or agents.

"Public safety agency" means a governmental entity that provides firefighting, law enforcement, emergency medical or other emergency services.

"Public safety answering point" means the public safety agency that receives incoming 911 calls and dispatches appropriate public safety agencies to respond to those calls.

"Reseller" means a person or entity that purchases [~~commercial mobile radio service~~] communications services from a [~~wireless~~] communications service provider for the purpose of reselling [~~commercial mobile radio service~~] communications services to end-users.

"Telematics" means the blending of computers and wireless telecommunications technologies, associated with a motor vehicle which conveys data associated with events related to said vehicle to a call center or PSAP.

~~["Wireless enhanced 911 commercial mobile radio service costs" means all capital, nonrecurring, and recurring costs directly related to the implementation and operation of phase I or phase II wireless enhanced 911 services pursuant to the Federal Communications Commission order.]~~

~~"Wireless enhanced 911 fund" or "fund" means the statewide special fund established to ensure adequate cost recovery for the deployment of phase I and phase II wireless enhanced 911 service in Hawaii.]~~

~~"Wireless provider" means a person or entity that is authorized by the Federal Communications Commission to provide facilities-based commercial mobile radio service within the State.]~~

"Universal emergency number service" or "911 service" means public communications service that provides service users with the ability to reach a public safety answering point by accessing a 911 system.

“Interconnected voice over Internet protocol (VoIP)” means a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network."

"Interconnected VoIP service provider" means an entity that provides interconnected voice over Internet protocol service.

“Competitive Local Exchange Carrier (CLEC)” means a alternative provider of local communication services other than the Incumbent Local Exchange Carrier (ILEC).

[~~§138-2(3)~~] [~~Wireless enhanced~~] **Enhanced 911 board.** (a) There is created within the department of accounting and general services, for administrative purposes, [~~a wireless~~] an enhanced 911 board consisting of [~~eleven~~] Thirteen voting members; provided that the membership shall consist of:

(1) The comptroller or the comptroller's designee;

(2) Three representatives from the wireless communications service providers, who shall be appointed by the governor as provided in section 26-34[, ~~except as otherwise provided by law~~];

(3) Representation from each county public safety answering point (PSAP) will be represented by one (1) employee or manager with the exception of Oahu, with two (2) individuals, whose first representative will be an employee or manager from the Honolulu Police Department PSAP, and a second representative, chosen by the Mayor of the City and County of Honolulu who shall be appointed by the governor, as provided in section 26-34.

(4) The consumer advocate or the consumer advocate's designee; [~~and~~]

(5) One representative from a communications service company that offers Interconnected VoIP services, who shall be appointed by the governor as provided in section 26-34;

~~[(5)]~~ (6) One representative of the current Local Exchange carrier.

(b) ~~[Six members]~~ A simple majority shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board.

(c) The chairperson of the board shall be elected by the members of the board by simple majority and shall serve a term of one year.

(d) The board shall meet upon the call of the chairperson, but not less than quarterly.

(e) The members representing wireless, Local Exchange carrier, and Interconnected VoIP service providers shall be appointed by the governor for terms of two years~~;~~
~~except that terms of the two members initially appointed shall be for eighteen months~~].

(f) Each member shall hold office until the member's successor is appointed and qualified. Section 26-34 shall apply only insofar as it relates to succession, vacancies, and suspension of board members, and as provided in subsection (a).

~~[(g)]~~ (g) The board has the authority to promulgate, carry out and enforce Rules to carry out the power and duties related to this act

(h) The members shall serve without compensation. Members shall be entitled to reimbursements from the ~~[wireless]~~ enhanced 911 fund for reasonable traveling expenses incurred in connection with the performance of board duties.

~~[(h)]~~ (i) The board or its chairperson, with the approval of the board, may retain independent, third-party accounting firms, consultants, or other third party to:

(1) Create reports, make payments into the fund, process checks, and make distributions from the fund, as directed by the board and as allowed by this chapter; and

(2) Perform administrative duties necessary to administer the fund or oversee operations of the board, including providing technical advisory support~~[-];~~ provided that no third-party accounting firm, consultant, or other third party hired to perform these administrative duties may be retained if the accounting firm, consultant, or other third party, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any entity subject to the provisions of this chapter.

~~[(i)]~~ (j) The board shall develop reasonable procedures to ensure that all ~~[wireless providers]~~ members receive adequate notice of board meetings and information concerning board decisions.

(k) The board shall fund the development, the deployment, and the sustaining of ~~[phase I and phase II wireless]~~ enhanced 911 service, including funding future E911 technologies.

(l) Within the Enhanced 9-1-1 Board there will be a person designated as the State 9-1-1 Coordinator as required by Section 3(b) of the federal Wireless Telecommunications and Public Safety Act of 1999(9-1-1 Act), This person will be chosen through nominations of the Hawaii PSAPs to the Board and approved by a vote of the Board. This person will serve at the pleasure of the Board.

[§138-3] ~~[Wireless-enhanced]~~ **Enhanced 911 fund.** There is established outside the state treasury a special fund, to be known as the ~~[wireless]~~ enhanced 911 fund, to be administered by the board. The fund shall consist of amounts collected under section 138-4. Moneys paid into the fund are not general fund revenues of the State. The board shall place the funds in an interest-bearing account at any federally insured financial institution, separate and apart from the general fund of the State. Moneys in the fund shall be expended exclusively by the board for the purposes of ensuring adequate ~~[cost recovery]~~ funding for the deployment, sustaining of ~~[phase I and phase II wireless]~~ enhanced 911 service, and developing and funding future E911 technologies and for expenses of administering the fund.

[§138-4] **Surcharge.** (a) A monthly ~~[wireless]~~ enhanced 911 surcharge, subject to this chapter, shall be imposed upon each ~~[commercial mobile radio]~~ communications service connection.

(b) ~~[The effective date of the surcharge shall be July 1, 2004.]~~ The rate of the surcharge shall be set at 66 _ cents per month for each ~~[commercial mobile radio]~~ communications service connection. The surcharge shall have uniform application and shall be imposed on each ~~[commercial mobile radio]~~ communications service connection operating within the ~~[State]~~ state except:

- (1) Connections billed to federal, state, and county government entities
- (2) A prepaid surcharge of 66 cents shall be collected by the seller from the consumer at the time of each retail transaction of prepaid communication services occurring in the state

(c) All [~~wireless~~] communications service providers and resellers shall bill to and collect from each of their customers a monthly surcharge at the rate established for each [~~commercial mobile radio~~] communications service connection. The [~~wireless~~] communications service provider or reseller may list the surcharge as a separate line item on each bill. If a [~~wireless~~] communications service provider or reseller receives a partial payment for a monthly bill from a [~~commercial mobile radio~~] communications service customer, the [~~wireless~~] communications service provider or reseller shall apply the payment against the amount the customer owes the [~~wireless~~] communications service provider or reseller, before applying the partial payment against the surcharge.

(d) A [~~wireless~~] communications service provider that:

(1) Is collecting the surcharge and remitting appropriate portions of the surcharge to the fund pursuant to this chapter; and

(2) Has been requested by a public safety answering point to provide [~~phase I or phase II wireless~~] enhanced 911 service in a particular county or counties;

may recover [~~wireless~~] enhanced 911 [~~commercial mobile radio~~] service costs as provided in this chapter.

(e) Each [~~wireless~~] communications service provider or reseller may retain two per cent of the amount of surcharges collected to offset administrative expenses associated with billing and collecting the surcharge.

(f) A [~~wireless~~] communications service provider or reseller shall remit to the [~~wireless~~] enhanced 911 fund, within sixty days after the end of the calendar month in which the surcharge is collected, an amount that represents the surcharges collected less

amounts retained for administrative expenses incurred by the [~~wireless~~] communications service provider or reseller, as provided in subsection (e).

(g) The surcharges collected by the [~~wireless~~] communications service provider or reseller pursuant to this section shall not be subject to any tax, fee, or assessment, nor are they considered revenue of the provider or reseller.

(h) Each customer who is subject to this chapter shall be liable to the State for the surcharge until it has been paid to the [~~wireless~~] communications service provider.

[~~Wireless~~] Communications service providers shall have no liability to remit surcharges that have not been paid by customers. A [~~wireless~~] communications service provider or reseller shall have no obligation to take any legal action to enforce the collection of the surcharge for which any customer is billed. However, the board may initiate a collection action against the customer. If the board prevails in such a collection action, reasonable attorney's fees and costs shall be awarded.

(i) At any time the members deem it necessary and appropriate, the board may meet to make recommendations to the legislature as to whether the surcharge and fund should be discontinued, continued as is, or amended.

(j) When considering whether to discontinue, continue as is, or amend the fund or surcharge, the board's recommendations shall be based on the latest available information concerning costs associated with providing [~~wireless~~] enhanced 911 service [~~in accordance with the Federal Communications Commission order~~].

~~[§138-5]~~ **[Recovery] Disbursements from the fund.** (a) ~~[After January 1, 2005, every]~~ Every public safety answering point shall be eligible to seek ~~[reimbursement]~~ disbursements from the fund ~~solely~~ to pay for the reasonable costs to lease, purchase, or maintain all necessary equipment, including computer hardware, software, and database provisioning, required by the public safety answering point to provide technical functionality for the ~~[wireless]~~ enhanced 911 service. This may include any expenses directly associated with the planning phases and training of personnel in any new and emerging technologies involving enhanced 911. ~~[pursuant to the Federal Communications Commission order.]~~ With the exception of those expenses directly associated with the implementation of new technologies, all other expenses necessary to operate the public safety answering point, including but not limited to those expenses related to overhead, staffing, and other day-to-day operational expenses, shall continue to be paid through the general funding of the respective counties.

(b) Every public safety answering point shall be eligible to seek disbursements from the fund to pay for the reasonable costs associated with having representatives, other than E911 Board Members, on E911 Board Committees to include, established and investigative committees.

~~(c)(b)~~ ~~[After January 1, 2005, each wireless]~~ Each communications service provider may request reimbursement from the fund of ~~[wireless]~~ enhanced 911 ~~[commercial mobile radio]~~ service costs incurred; provided that the costs:

- (1) Are recoverable under section 138-4(d); and
- (2) Have not already been reimbursed to the ~~[wireless]~~ communications service provider from the fund.

In no event shall a ~~[wireless]~~ communications service provider be reimbursed for any amount above its actual ~~[wireless]~~ enhanced 911 ~~[commercial mobile radio]~~ communications service costs allowed to be recovered under section 138-4(d).

(d) Every communications service provider shall be eligible to seek disbursements from the fund to pay for the reasonable costs associated with having representatives, other than E911 Board Members, on E911 Board Committees to include, established and investigative committees.

(e) ~~(e)~~ After the expenses of the board are paid, the public safety answering points shall be allocated two-thirds of the remaining balance of the fund. The remaining one-third shall be available for ~~wireless~~ communications service provider cost recovery. The board shall determine the reimbursement amounts for the public safety answering points, based on the limitations set forth in section 138-5(a). The reimbursement level for each ~~wireless~~ communications service provider shall be limited:

- (1) To one third the total contribution made by the ~~wireless~~ individual communications service provider into the enhanced 911 fund. This method of direct reimbursement is not available to the provider of wire line E911; and

- (2) As provided in section 138-5(bc).]

[E]§138-6[3] Report to the legislature. The board shall submit an annual report to the legislature, including:

- (1) The total aggregate surcharge collected by the State in the last fiscal year;
- (2) The amount of disbursement from the fund;
- (3) The recipient of each disbursement and a description of the project for which the money was disbursed;
- (4) The conditions, if any, placed by the board on disbursements from the fund;

- (5) The planned expenditures from the fund in the next fiscal year;
- (6) The amount of any unexpended funds carried forward for the next fiscal year;
- (7) A cost study to guide the legislature towards necessary adjustments to the fund and the monthly surcharge; and
- (8) Status report of jurisdictional capabilities for [~~wireless E911~~] enhanced 911 services, including public safety answering points[, ~~wireless providers,~~] and [~~wireline~~] communications service providers. [~~The report shall include the status of requirements outlined in the Federal Communications Commission Order 94-102 and subsequent supporting orders related to phase I and phase II wireless 911 services.~~]

[~~E~~§138-7[~~3~~] **Audits.** (a) During any period in which [~~a wireless~~] an enhanced 911 surcharge is imposed upon customers, the board may request an audited report prepared by an independent certified public accountant that demonstrates that the request for cost recovery from public safety answering points and [~~wireless~~] communications service providers recovers only costs and expenses directly related to the provision of [~~phase I or phase II wireless~~] enhanced 911 service as authorized by this chapter. The cost of the audited reports shall be considered expenses of the board. The board shall prevent public disclosure of proprietary information contained in the audited report, unless required by court order or appropriate administrative agency decision.

(b) The board shall select an independent third party to audit the fund every two years to determine whether the fund is being managed in accordance with this chapter. The board may use the audit to determine whether the amount of the surcharge assessed on each [~~commercial mobile radio~~] communications service connection is required to be adjusted. The costs of the audit shall be an administrative cost of the board recoverable from the fund.

[§138-8] Proprietary information. (a) All proprietary information submitted to the board by any third party used by the board in connection with its duties or any public safety answering point in deploying ~~wireless~~ enhanced 911 service shall be retained in confidence. Proprietary information submitted pursuant to this chapter shall not be released to any person, other than to the submitting ~~wireless~~ communications service provider or reseller, the board, or any independent, third-party accounting firm retained by the board, without the express permission of the submitting ~~wireless~~ communications service provider or reseller. General information collected by the board shall be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual ~~wireless~~ communications service provider.

(b) The board, any third parties it may retain, and any public safety answering point shall take appropriate measures to maintain the confidentiality of the proprietary information that may be submitted by a ~~wireless~~ communications service provider. The board shall hold all propriety information in confidence and shall adopt reasonable procedures to prevent disclosure or providing access to the proprietary information to the public and competitors, including members of the board representing other ~~wireless~~ communications service providers. Members of the board shall not disclose the information to any third parties, including their employers, without the written consent of the ~~wireless~~ communications service provider whose proprietary information is to be disclosed.

(c) A committee consisting of all board members, except the ~~[three-wireless]~~ communications service provider representatives, shall have the power to act for the board on the specific matters defined by the board, when at least two-thirds of the members of the board determine that a board action may be conducted by the committee to prevent disclosure of proprietary information to the ~~[wireless]~~ communications service provider representatives.

~~[E]~~**§138-9**~~[F]~~ **Limitation of liability.** (a) Notwithstanding any law to the contrary, in no event shall any ~~[wireless]~~ communications service provider, reseller, or their respective employees, directors, officers, assigns, affiliates, or agents, except in cases of gross negligence or wanton and willful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to a person or from damage to property incurred by any person in connection with any act or omission in developing, designing, adopting, establishing, installing, participating in, implementing, maintaining, or providing access to ~~[phase I or phase II-wireless]~~ enhanced 911 or any other ~~[wireless]~~ communications service intended to help persons obtain emergency assistance. In addition, no ~~[wireless]~~ communications service provider, reseller, or their respective employees, directors, officers, assigns, affiliates, or agents shall be liable for civil damages or criminal liability in connection with the release of customer information to any governmental entity, including any public safety answering point, as required under this chapter.

(b) In no event shall any public safety answering point, or its employees, assigns, or agents, or emergency response personnel, except in cases of gross negligence or wanton

and willful misconduct, be liable for any civil damages or criminal liability resulting from death or injury to the person or from damage to property incurred by any person in connection with any act or omission in the development, installation, maintenance, operation, or provision of ~~[phase I or phase II wireless]~~ enhanced 911 service.

[E]§138-10[F] Database or location information. (a) Any ~~[commercial mobile radio]~~ communications service location information obtained by any public safety answering point or public safety agency or its personnel for public safety purposes is not a government record open to disclosure under chapter 92F.

(b) A person shall not disclose or use, for any purpose other than the ~~[wireless]~~ enhanced 911 calling system, information contained in the database of the ~~[wireless]~~ communications service provider's network portion of the ~~[wireless]~~ enhanced 911 calling system established pursuant to this chapter, without the prior written consent of the ~~[wireless]~~ communications service provider.

[E]§138-11[F] Dispute resolution. (a) Any ~~[wireless]~~ communications service provider, reseller, or public safety answering point aggrieved by a decision of the board shall have the right to petition the board for reconsideration within ten days following the rendering of the board's decision. As part of its petition for reconsideration, the aggrieved party may present any reasonable evidence or information for the board to consider. The board shall render its decision on the reconsideration petition as soon as reasonably possible, but no later than thirty days after the reconsideration request is made.

(b) An aggrieved party, following the completion of the reconsideration petition process, upon agreement of the other party, may have the dispute resolved through final and binding arbitration by a single arbitrator in accordance with the ~~[Wireless]~~ Industry Arbitration Rules of the American Arbitration Association. The costs of the arbitration, including the fees and expenses of the arbitrator, shall be borne by the non prevailing party of any arbitration proceeding. The arbitrator's decision shall be final and binding and may be confirmed and enforced in any court of competent jurisdiction.

(c) Nothing in this section shall preclude any ~~[wireless]~~ communications service provider, reseller, or public safety answering point from pursuing any existing right or remedy to which it is entitled in any court having jurisdiction thereof.

~~[§138-12]~~ **Service contracts.** A ~~[wireless]~~ communications service provider shall not be required to provide ~~[wireless]~~ enhanced 911 service until the ~~[wireless]~~ communications service provider and the public safety answering point providing ~~[wireless]~~ enhanced 911 service in the county or counties in which the ~~[wireless]~~ communications service provider is licensed to provide ~~[commercial mobile radio]~~ communications service have entered into a written agreement setting forth the basic terms of service to be provided."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect July 1, 2011.

